IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Crl.MC.No. 2123 of 2007()

CRMP.749/2007 of SESSIONS COURT, KALPETTA
[CRIME NO.116/07 OF MEPPADI POLICE STATION]

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PETITIONER: ACCUSED 1 & 2

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1. ROJI M. AUGUSTINE, S/O. M.M.AUGUSTINE, CONTRACTOR, MOONGANANIYIO HOUSE, VAZHAVATTA, KALPETTA, VYTHIRI TALUK, WAYANAD DISTRICT.

2. M.M.AUGUSTINE, S/O. MATHAI, MOONGANANIYIL HOUSE, THRIKKAIPATTA, MEPPADI, VYTHIRI TALUK, WAYANAD DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

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1. THE SUB INSPECTOR OF POLICE, MEPPADI POLICE STATION.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2123 of 2007

Dated this the 6th day of July 2007

O R D E R

In favour of the petitioners, directions have been issued under Section 438 Cr.P.C as per Annexure 1 order. Annexure 1 order clearly indicates that there was a representation before the learned Sessions Judge that the petitioners are ready to produce the hypothecated goods. It is accordingly, while granting anticipatory bail, the learned Sessions Judge imposed condition No.6, which I extract below:

> "They shall also produce the hypothecated tipper lorris as and when directed by the investigating officer; whether those tipper lorries are released to the petitioners or defacto complainant etc. are matters to be decided by the concerned court at the appropriate time."

2. The petitioners did not appear before the investigating officer. The learned Public Prosecutor, on behalf of the investigating officer, submits that the petitioners are absconding and they are not available for arrest. The time stipulated by the learned Sessions Judge has expired also.

3. The petitioners have come to this court raising a grievance against condition No.6 imposed by the learned Sessions Judge. It is submitted that condition No.6 imposed is not a condition which the

learned Sessions Judge is competent to impose under Section 438(2) Cr.P.C. In these circumstances, it is prayed that the said condition may be set aside and the petitioners may be permitted to surrender before the investigating officer on any specified date.

4. Coming to the validity of the condition imposed, I must note the specific observation in paragraph 4 of Annexure 1 order that the petitioners who were seeking invocation of the equitable discretion under Section 438 Cr.P.C had offered to produce the hypothecated goods. Having obtained an order on such representation, I find no merit whatsoever in the present attempt made to assail condition No.6 extracted above.

5. The next question is whether the condition is legally sustainable. Conditions (i) to (iv) specified in Section 438(2) Cr.P.C are not exhaustive at all. That is evident from the language of Section 438(2) Cr.P.C which I extract below:

> "When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including-
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> (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
> ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

> iii) a condition that the person shall not leave India without the previous permission of the Court;
> iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section."
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> (emphasis supplied)

6. The expression "including" appearing in Section 438(2) Cr.P.C clearly shows that the four conditions referred above are only indicative and not exhaustive. In these circumstances, I find no merit in the contention raised that the learned Sessions Judge has no jurisdictional competence to impose a condition like condition No.6 extracted above, even accepting the offer of the petitioners.

7. The learned counsel for the petitioners submits that the petitioners are willing to appear before the investigating officer and take advantage of Annexure 1 order. But the petitioners apprehend that they may not be released on bail. That apprehension is without any basis as the order clearly directs that the petitioners must be released on bail in this crime, if and when they are arrested.

8. An apprehension is raised that insistence will be made on compliance with condition No.6 straight away. It is for the investigating officer to issue directions to the petitioners to produce vehicles within a stipulated time. The question of breach of condition of bail or cancellation of bail can arise only after the time stipulated in such notice expires and the petitioners do not comply with the direction.

9. In these circumstances, this Criminal Miscellaneous Case is allowed in part and the following directions are issued:

i) The petitioners can surrender before the investigating officer at 11 a.m on 16/07/2007 and if they so surrender, they shall be released on bail as stipulated in the order dated 23/6/2007. Within ten days from such date, the petitioners shall appear before the learned Magistrate and seek regular bail.

ii) It shall be open to the investigating officer on such surrender of the petitioners to issue appropriate directions for production of the vehicles on a date to be specified by him. Needless to say, appropriate consequences will follow if the direction is not complied with.

Hand over copy of this order to the learned counsel for the petitioner and the learned Public Prosecutor.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007